AMENDED IN SENATE SEPTEMBER 8, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 1050

## Introduced by Assembly Member Ma

February 18, 2011

An act to add and repeal Section 41127.9 Section 316 to the Public Utilities Code, and to add Part 21 (commencing with Section 42000) to Division 2 of the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Telecommunications: *prepaid mobile telephony services*: taxes and fees.

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(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Surcharge amounts are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to

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be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the "911" emergency telephone number system.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified of funding. Existing law establishes telecommunications universal service programs and authorizes the commission to impose charges for the purpose of funding those programs.

This bill would require the State Board of Equalization to convene a working group by March 1, 2012, to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications—taxes,—fees,—and—surcharges—from—prepaid communications end-use consumers. The bill would require the working group to report its recommendations by April 30, 2013. The bill would require that the working group include stakeholder representatives, including—representatives—from—the—commission,—the—California Technology—Agency,—local—government—entities,—law—enforcement agencies, mobile telephony service providers, retailers, and consumer groups. Pursuant to existing law, the bill would repeal these requirements on January 1, 2016.

This bill would enact the Prepaid Wireless Surcharge Collection Act. The bill would establish a prepaid communications charge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid communications charge would include a state component, as defined, and if a local government has adopted utility user taxes or other specified charges that are otherwise applicable to prepaid mobile telephony services and the retail transaction occurs within that jurisdiction, a local component. The bill would state the

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intent of the Legislature to develop a method whereby a seller is required to collect the local component. The bill would require a seller, as defined, to collect the prepaid communications charge from a consumer and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board to remit that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act to the California Technology Agency and remit the balance of the state component, minus certain administrative costs incurred by the board, to the Public Utilities Commission. The bill would require the State Board of Equalization to remit the local component, if applicable, to the local government. The bill would require the Public Utilities Commission to annually compute the commission's reimbursement fee and specified telecommunications universal service program fees, to post notice of those fees on its Internet Web site and to notify the State Board of Equalization of the amounts.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: majority <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 316 is added to the Public Utilities Code, 2 to read:
- 3 316. (a) The commission shall annually, on or before December 31, compute a reimbursement fee to be collected and
- 5 remitted to the commission pursuant to the Prepaid Wireless
- 6 Surcharge Collection Act (Part 21 (commencing with Section
- 7 42000) of Division 2 of the Revenue and Taxation Code). On or
- 8 before January 15 of the following year, the commission shall post
- 9 notice of the fee on its Internet Web site and notify the State Board 10 of Equalization of this information.
- 11 (b) The commission shall annually, on or before December 31,
- 12 compute the telecommunications universal service fees to be
- 13 collected and remitted to the commission pursuant to the Prepaid
- Wireless Surcharge Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code).
- 16 On or before January 15 of the following year, the commission
- 17 shall post notice of the fee on its Internet Web site and notify the
- 18 State Board of Equalization of this information. In computing the

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telecommunications universal service fees, the commission shall consider the degree to which persons who utilize prepaid mobile telephony services benefit from the state's programs to advance universal service and adjust those fees downward to the extent the commission determines that persons who purchase prepaid services derive a lower benefit from the state's universal service programs than do subscribers of a telecommunications service plan.

- (c) A seller collecting prepaid communications charges pursuant to Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code may rely upon the accuracy of the information posted on the commission's Internet Web site in collecting those charges.
- SEC. 2. Part 21 (commencing with Section 42000) is added to Division 2 of the Revenue and Taxation Code, to read:

# PART 21. PREPAID WIRELESS SURCHARGE COLLECTION ACT

### Chapter 1. General Provisions and Definitions

42000. This part shall be known, and may be cited, as the Prepaid Wireless Surcharge Collection Act.

42002. The Legislature finds and declares all of the following:

- (a) Maintaining effective and efficient telecommunications services, 911 emergency systems, telecommunications-related public policy programs to promote universal service, and various local programs across the state benefits all persons with access to the telecommunications system.
- (b) Under existing law, end-use communications taxes, fees, and surcharges, including the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)), telecommunications universal service surcharges, local 911 emergency system surcharges, and utility user taxes are important funding mechanisms to assist state and local governments with the deployment of a variety of important services and programs to the citizens of this state.
- (c) Providers of end-use communications services are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.

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(d) Under existing law, there is a method for collecting communications taxes, fees, and surcharges from postpaid communications end-use consumers. However, there is no method for collecting communications taxes, fees, and surcharges from prepaid end-use consumers.

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- (e) Consumers purchase prepaid communications services at a wide variety of retail locations and other distribution channels, as well as through service providers.
- (f) Prepaid communications services are an important and growing segment of the communications industry. Prepaid communications services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.
- (g) To ensure equitable contributions from end-use consumers of postpaid and prepaid communications services, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid communications services.
- 42004. For purposes of this part, the following terms have the following meanings:
- (a) "Communications charge" means any and all state and locally authorized taxes, fees, and surcharges that are applicable to mobile telephony services, including each of the following:
- (1) Surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) that are applicable to mobile telephony services.
- (2) Charges authorized by the Public Utilities Commission to be collected from end-use customers of mobile telephony services, including:
- (A) The California High-Cost Fund-A Administrative Committee Fund program surcharge (Section 275.6 of the Public Utilities Code).
- 33 (B) The California High-Cost Fund-BAdministrative Committee 34 Fund program surcharge (Section 739.3 of the Public Utilities 35 Code).
- 36 (C) The Deaf and Disabled Telecommunications Program 37 Administrative Committee Fund surcharge (Section 2881 of the 38 Public Utilities Code).
- 39 (D) The California Teleconnect Fund Administrative Committee 40 Fund program surcharge (Section 280 of the Public Utilities Code).

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38 39 (E) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

- (F) The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).
- (G) Public Utilities Commission reimbursement fees collected pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.
- (3) Local 911 or access line taxes, fees, or surcharges that are applicable to mobile telephony services.
- (4) Local utility user taxes that are applicable to mobile telephony services.
- (b) "Consumer" means a person who purchases prepaid mobile telephony services in a retail transaction.
- (c) "Local component" means those items included in paragraphs (3) and (4) of subdivision (a), for a retail transaction, as defined in subdivision (h).
- (d) "Mobile telephony service" and "mobile data service" have the same meanings as defined in Section 224.4 of the Public Utilities Code.
- (e) "Prepaid communications charge" means a communications charge that is required to be collected by a seller from a consumer in the amount established pursuant to Chapter 2 (commencing with Section 42010).
- (f) "Prepaid mobile telephony services" means a purchase of the right to utilize mobile telephony services, either alone or in combination with mobile data services, that is paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.
- (g) "Provider" means a person or corporation that provides prepaid mobile telephone services pursuant to a license issued by the Federal Communications Commission.
- (h) "Retail transaction" means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data services, from a seller for any purpose other than resale.
- (i) "Seller" means a person or corporation that sells prepaid mobile telephony service to a consumer.
- (j) "State component" means those portions of the prepaid communications charge that are collected and remitted for state

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services, specifically those items included in paragraphs (1) and (2) of subdivision (a).

## Chapter 2. The Prepaid Communications Charge

- 42010. (a) There is hereby imposed upon end-use consumers a prepaid communications charge that consists of the state component and the local component, if applicable, to be collected at the time of the retail transaction based upon a percentage of the sales price of each retail transaction that occurs in this state.
- (b) Beginning \_\_\_\_\_, the state component of the prepaid communications charge shall be collected by each seller from the consumer for each retail transaction that occurs in the state. The board shall annually post on its Internet Web site the amount of the state component, to include those amounts determined by the Public Utilities Commission pursuant to Section 316 of the Public Utilities Code and those amounts to be collected pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)). The board shall post those amounts on its Internet Web site not less than \_\_\_\_ days prior to the date on which those amounts shall go into effect as the new amount of the state component.
- (c) It is the intent of the Legislature to develop a method for sellers to also collect a local component if the retail transaction occurs within a local governmental jurisdiction that has elected to impose such a charge, or more than one such charge.
- (d) The amount of the prepaid communications charge shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. The seller may, but is not required to, separately provide the state component and local component of the prepaid communications charge.
- 42012. For purposes of this chapter, a retail transaction occurs in this state, and within a local governmental jurisdiction of the state, under any of the following circumstances:
- (a) The consumer makes the retail transaction in person at a business location in the state or local jurisdiction.
- (b) If subdivision (a) is not applicable, the product is delivered to the consumer by mail or other form of shipping to an address

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in the state that the consumer supplies to the seller for purposes of mailing or shipping.

- (c) If neither subdivision (a) nor (b) is applicable, the seller's records, maintained in the ordinary course of business, indicate that the consumer's address is in the state and the records are not made or kept in bad faith.
- (d) If subdivisions (a), (b), and (c) are not applicable, the consumer gives an address in the state during consummation of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.
- (e) If subdivisions (a), (b), (c), and (d) are not applicable, the calling number for the mobile telephony service communications device is associated with an area code located in California.
- 42014. The prepaid communications charge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid communications charges that the seller collects from consumers pursuant to Chapter 3 (commencing with Section 42020), including all charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.
- 42016. (a) If prepaid mobile telephony services are sold with one or more other products for a single, nonitemized price, then the prepaid communications charge shall apply to the entire nonitemized price unless the seller elects to apply the charge to either of the following:
- (1) If the purchase price for the prepaid mobile telephony services component of the bundled charge is disclosed to the consumer, the prepaid communications charge shall be calculated based upon that amount.
- (2) If the seller can identify the portion of the bundled price that is attributable to supplying prepaid mobile telephony services by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including nontax purposes, the prepaid communications charge shall be calculated based upon that amount.
- (b) If a minimal amount of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, commonly termed a cellular telephone, the seller may elect not to apply the prepaid communications

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charge to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars (\$5) or less, is a minimal amount.

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### CHAPTER 3. ADMINISTRATION

- 42020. (a) All prepaid communications charges collected by sellers shall be remitted to the board pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). Not later than \_\_\_\_\_, the board shall establish registration and payment procedures for sellers consistent with the Fee Collection Procedures Law.
- (b) A seller shall be permitted to deduct and retain \_\_\_\_\_ percent of the prepaid communications charges that are collected by the seller from consumers.
- (c) The audit and appeal procedures of the Fee Collection Procedures Law (Part 30 (commencing with Section 55601)) shall apply to the collection and remittance of prepaid communications charges.
- (d) The board shall establish procedures to be utilized by a seller to document that a sale is not a retail transaction.
- (e) Within 30 days of receipt, and after deducting an amount not to exceed \_\_\_\_ percent of the collected prepaid communications charges retained by the board to reimburse its direct costs of administering the collection and remittance of prepaid communications charges, the board shall pay all remitted prepaid communications charges as follows:
  - (1) The state component shall be remitted as follows:
- (A) To the California Technology Agency, that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)).
- (B) To the Public Utilities Commission, that portion of the state component collected for those charges authorized by the commission identified in paragraph (2) of subdivision (a) of Section 42004.
- (2) The local component shall be remitted to the local government.
- SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

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1 the meaning of Article IV of the Constitution and shall go into 2 immediate effect. The facts constituting the necessity are:

In order to provide a collection mechanism as soon as possible by which state and local charges can be collected from end-users of prepaid mobile telephony services, thereby permitting needed financial support for programs necessary to serve the public or telecommunications users, it is necessary that this act take effect immediately.

SECTION 1. The Legislature finds and declares all of the following:

- (a) Maintaining effective and efficient telecommunications services, 911 emergency systems, telecommunications-related public policy programs to promote universal service, and various local programs across the state benefits all citizens.
- (b) Under existing law, communications taxes, fees, and surcharges, including the Emergency Telephone Users Surcharge Act, telecommunications universal service surcharges, local 911 emergency system surcharges, and utility user taxes are important funding mechanisms to assist state and local governments with the deployment of a variety of important services and programs to the citizens of this state.
- (c) Providers of communications services are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.
- (d) Under existing law, there is a method for collecting communications taxes, fees, and surcharges from postpaid communications end-use consumers. However, there is no method for collecting communications taxes, fees, and surcharges from prepaid end-use consumers.
- (e) Consumers purchase prepaid communications services at a wide variety of retail locations and other distribution channels, as well as through service providers.
- (f) Prepaid communications services are an important and growing segment of the communications industry.
- (g) To ensure equitable contributions from end-use consumers of postpaid and prepaid communications services, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid communications services.

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SEC. 2. Section 41127.9 is added to the Revenue and Taxation Code, to read:

41127.9. (a) The State Board of Equalization shall convene a working group, by March 1, 2012, to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-use consumers. The working group shall report to the Legislature with its recommendations by April 30, 2013. The working group shall include stakeholder representatives, including, but not limited to, representatives from the Public Utilities Commission, the California Technology Agency, local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups.

- (b) For the purposes of this section, "communications taxes, fees, and surcharges" means any and all state and locally authorized taxes, fees, and surcharges on communications services, including, but not limited to:
- (1) Surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)).
- (2) Charges authorized by the Public Utilities Commission, including:
- (A) The California High Cost Fund-A program surcharge (Section 275.6, Public Utilities Code).
- (B) The California High Cost Fund-B program surcharge (Section 739.3, Public Utilities Code).
- (C) The Deaf and Disabled Telecommunications Program surcharge (Section 2881 and following, Public Utilities Code).
- (D) The California Teleconnect Administrative Committee program surcharge (Section 280, Public Utilities Code).
- (E) The California Advanced Services Fund program surcharge (Section 281, Public Utilities Code).
- (F) The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).
- (G) Public Utilities Commission reimbursement fees collected pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.
- (3) Local 911 or access line taxes, fees, or surcharges.
- 39 (4) Local utility user taxes.

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- (e) (1) The report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the
- 3 Government Code.
- (2) Pursuant to Section 10231.5 of the Government Code, this 4
- 5 section is repealed on January 1, 2016.